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less, it is well settled that a lapsed part of the residuary estate will not go to the other residuary legatees, but to the next of kin. *Canfield* v. *Canfield*, 62 N. J. Eq. 578, 50 Atl. 471. If, however, the gift is to a class, on the death of one, the survivors take the whole. *Dresel* v. *King*, 198 Mass. 546, 85 N. E. 77. Usually, a gift to a group consisting of persons connected by some common tie, as "to all my nephews and nieces," is *prima facie* a gift to a class. *Kingsbury* v. *Walter*, [1901] App. Cas. 187. This presumption is strengthened in the principal case by the fact that the beneficiaries are grouped as residuary legatees. *Smith* v. *Haynes*, 202 Mass. 531, 89 N. E. 158. But where the beneficiaries are named, though they may constitute a class, it is generally held the gift is to the individuals distributively. *Dildine* v. *Dildine*, 32 N. J. Eq. 78; *Sharpless's Estate*, 214 Pa. St. 335, 63 Atl. 884. The words "share and share alike" also tend to indicate an intention to have an individual distribution. *Moffet* v. *Elmendorf*, 152 N. Y. 475, 46 N. E. 845. Balancing these considerations, and with regard to the rest of the will, the court in the present case might well have found as it did.

BOOK REVIEWS

THE POSITION OF FOREIGN CORPORATIONS IN AMERICAN CONSTITUTIONAL LAW. By Gerard Carl Henderson, A.B., LL.B. Cambridge University Press. 1918.

Mr. Henderson's essay will with English lawyers excite at once amazement and admiration. Their wonder will be caused by the subject with which the book deals. Most Englishmen have somehow become so accustomed to the existence of corporate bodies, whether English or foreign, that they no more think of any necessity for explaining or defining the nature of a corporation than of the need for a lawyer, at any rate, making up his mind what is the proper definition of a human being, any more than for settling how far soul and body are united together, and whether the soul can exist without a bodily form. To the ordinary barrister or solicitor in England these inquiries lie outside his professional interests; some of them are questions which deserve the attention of clergymen; others are the study belonging to philosophers or metaphysicians. It will come as startling news to our practicing lawyers, to our leading solicitors, and, even one suspects, to a good number of our judges, to learn that the question, whether a corporation, *e. g.*, the London and Northwestern Railway Company, is the creation of a legal fiction, or is as much an actual being as any living man or woman, occupies the attention not only of German jurists but also of the lawyers and the courts of the United States. No Englishman is surprised that any German should muddle his head over a futile controversy, for we all know that the Germans of today, and above all German professors, always think wrongly, and act wrongly. But English lawyers and judges are many of them astounded that the citizens of the United States, where, as we are inclined to believe, uprightness and good sense are as much developed as in England, should trouble themselves with futile controversies of what is popularly called a scholastic character. Difficult as it may be for leading English barristers fully occupied in the lucrative practice of that lucid misrepresentation which wins the verdicts of juries, and occasionally perverts the judgments of courts, to believe that speculations about the nature of corporate existence occupy in the United States, and have occupied for many years, the thoughts of successful lawyers and of some very distinguished judges, it is quite certain that questions as to the nature of corporate personality are constantly discussed, not only by the Law

Professors, but also by the leading lawyers of the United States. If any man doubts the truth of this assertion he should at once read Mr. Henderson's essay, and at the same time peruse Mr. Machen's article on "Corporate Personality," 24 HARV. L. REV. 253 and 347. But if many Englishmen are amazed at the vehemence with which a sort of legal controversy to which we in England are little used is carried on by American lawyers and countenanced by learned judges in American courts, every English reader will join in my admiration for the clearness and the learning with which a strange though really important question is explained and discussed by Mr. Henderson. Personally I am not inclined at the present moment to follow out German thought, or misthought, to the startling conclusion that a corporate body has all or nearly all the characteristics of a human being. Whilst I am not prepared without further consideration to treat the important legal fact as grounded on nothing but a legal fiction, my inclination is to go a good way in the direction of the line of thought followed out by Mr. Henderson, though at present I do not wish to do more than to dwell upon two or three ideas which his work has brought prominently before my mind. I purposely adopt in the rest of this article the form of questions. It best expresses the fact that I wish to write far more as an inquirer than as a controversialist.

First question: Why is it that, till recently at least, English judges and lawyers, as also English writers of law books, have paid but slight attention to questions bearing on the nature of corporate existence? I have not been able to study the matter in hand with anything like profundity, but, as is always my habit, when treating of a subject bearing on the conflict of laws, I turned to the one book bearing on that topic in which I place unlimited confidence, namely, the "Private International Law" of my dear friend, the late Mr. Westlake. He is one of those rare writers whose power of expression, though it greatly increased with every successive edition of his celebrated work, fell far short of his learning, of his thoughtfulness, and of his sound judgment. It is sometimes difficult at a first reading to follow his line of reasoning, but when a student has got completely to understand Westlake's thought, he will, to trust my own experience, find he has arrived at a true conclusion as to a possibly very difficult question. Now if any one will look at Chapter XVI of Westlake's book, which treats of Corporations and Public Institutions, he will find that a very few pages comprehend almost all that our author has to say as to the nature of such bodies. It is hardly an exaggeration to say that the subject is exhausted in three or four pages. It is true that events which have occurred since Westlake's death, and especially the terrible war, which I trust may have ended in a real peace before this notice reaches the editor of the HARVARD LAW REVIEW, but which now is only suspended, have forced our courts to consider, almost against their will, what is the true nature of a corporation (see *Daimler Co.* v. *Continental Tyre, &c. Co.*, [1916] A. C. II, 307, and contrast the same case before the court below, [1915] 1 K. B. 893). But the very terms of the judgment of the House of Lords in the case referred to show that their lordships were dealing with a comparatively new topic. Take then for a moment the question I have raised, how it has happened that English courts have rarely embarked on trying to solve a puzzle which has long perplexed American jurists. I am inclined to suggest two answers:

The recognition of foreign corporations and the tendency to consider them as persons who, when belonging to a friendly country, ought to have pretty much the same rights as other inhabitants of foreign and friendly states, was favorable to trade, and English courts, like Englishmen, have in a good sense been traders, and looked with favor upon any arrangement which increased the commerce of England. It was the easier for English judges, again, to recognize corporations created under a law different from that of England, be-

cause after the union with Scotland the necessity for such recognition became patent, and the same thing applied to a considerable extent to corporations created by colonial legislatures. Then, too, as Professor Maitland has more than once suggested, the tremendous and on the whole most salutary extension of trusteeship under the law of England made it often unnecessary to consider with care the position and the character of corporate bodies.

Second question: Is it necessary to treat a corporation either as a mere fiction or as being a person in the same sense as is a human being?

On this point the suggestions of Mr. Henderson are most important. It is impossible for me to say that I completely agree with the language he has used. I doubt whether in discussing the sort of legal problems with which his book deals any two persons would ever use precisely the same terms. In truth, the language which a writer on law is compelled to use consists to a great extent of words, such as a right, a person, an interest, a corporation, and the like, which have a popular, and, therefore, a vaguer sense. No man can make himself intelligible if he departs utterly from this sense, or makes to himself a series of carefully defined terms which he treats as the real meaning of the words he uses. If this be carried out beyond very narrow limits, he will find that he has created a language of his own far inferior to the current language of every-day life in its impressiveness and needing, if it is to be understood, systematic translation.

Third question: Is it not of primary importance to remember in dealing, *e. g.*, with a foreign corporation, that though corporate rights do distinctly differ from the ordinary rights of the group of individuals who make up the corporation, yet the persons whose interests are affected are such group of individuals?

That this inquiry must be answered affirmatively I am, as at present advised, inclined to agree with Mr. Henderson, who clearly emphasizes the difference between the corporate body and the group whose interests are affected. But my own inclination is to go a little further than he does, or perhaps rather to enter upon a path which he has not fully pursued. My belief increases every day that there are "natural corporations," if the expression may be allowed, that is, groups of persons who act together for different objects, some good and some bad, and on account of their acting together have many feelings, and do many actions which they would not entertain, and which they would not perform were it not for this habit of common action and common sentiment. This is what may be termed "corporate consciousness," and in my judgment the gravest mistake made both by English courts and by the British Parliament has been always, where possible, to incorporate such natural corporations when their aims are not injurious to the state, and, on the other hand, to treat such natural corporations as illegal where their aims are palpably injurious to the state. But I cannot at the moment express this idea with the accuracy and the reservations which it requires. I trust that at some future day I may be allowed to work it out with more fullness in the HARVARD LAW REVIEW. Meanwhile I hope that your readers will study, and I may be able to re-study, Mr. Henderson's masterly essay.

A. V. DICEY.

JUDICIAL TENURE IN THE UNITED STATES. With especial reference to the tenure of federal judges. By William S. Carpenter. New Haven: Yale University Press. 1918. pp. ix, 234.

In the classifications which academic organization has imposed upon us, judicial tenure no doubt belongs in the domain of politics. But personnel, mode of choice, and tenure of judges are not the least item in any effective program for the improvement of judicial administration of justice in this